

# FUNDAMENTALS OF TRIAL ADVOCACY COURSE

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## CLOSING ARGUMENT

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# The Closing Argument

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# Purposes of Closing

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- Closing Argument is your only chance to combine the facts and the law in a way that demonstrates why the Defendant is guilty of what you have charged him with
- Goal of closing argument should be to eliminate the greatest threat to a conviction:

**CONFUSION**



# Obstacles to Consider

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- Disorganization
  - Absence of theme and theory
- Lack of preparation
- Becoming lost in a mess of details which are unimportant
- Repetition of inherently confusing trial presentation

# Remember your Story

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- This is your opportunity to give meaning to your evidence.
- Remember, if you don't provide a story, they will create one



# Preparing to Close

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Preparation for your closing starts when you begin to prep for your case.

Set yourself up well:

- Case overview sheet
- Trial Notebook with notes for each witness, opening, closing
- If you've had the benefit of a second chair, incorporating their notes, quotes they wrote down, etc.

“Spectacular achievement is always preceded by unspectacular preparation.”

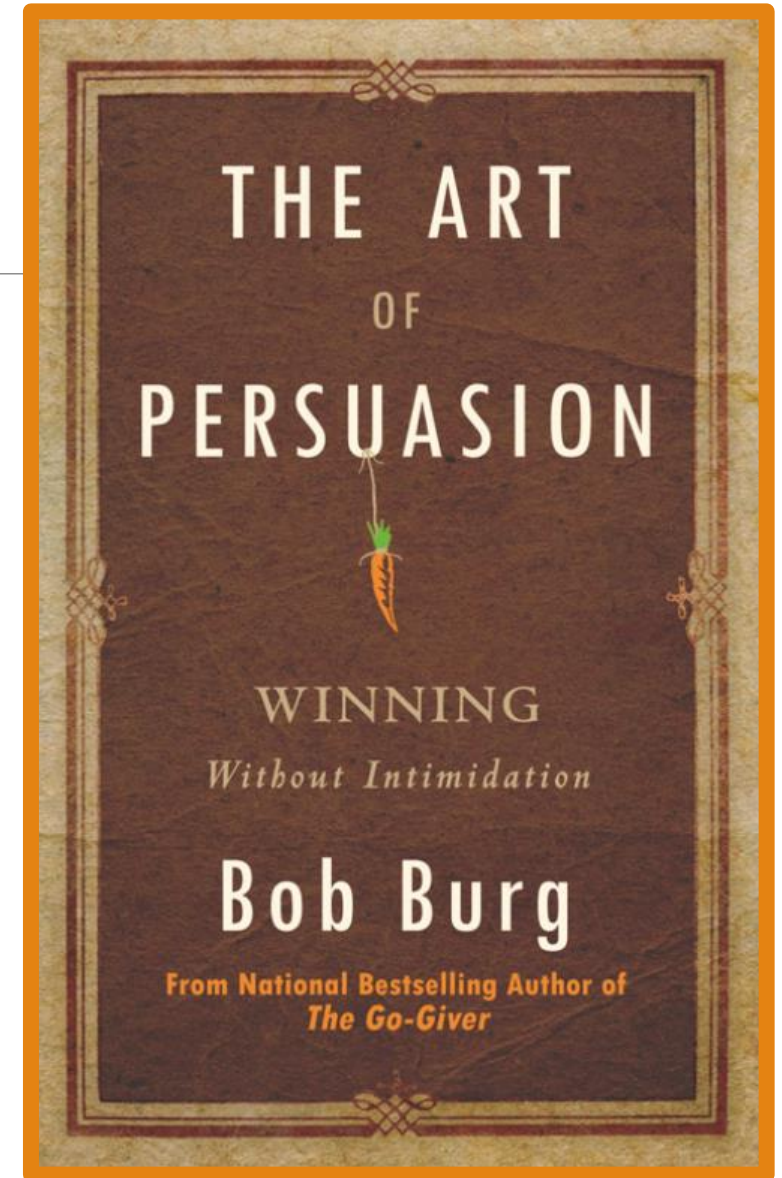
– ROBERT H. SCHULLER

# The Art of Persuasion

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- Facts are essential, but they cannot alone win cases
- Persuasion is the bridge between what the evidence is and the way the jury views it
- Your ability to argue your case in a logical and organized way may make the difference in your verdict

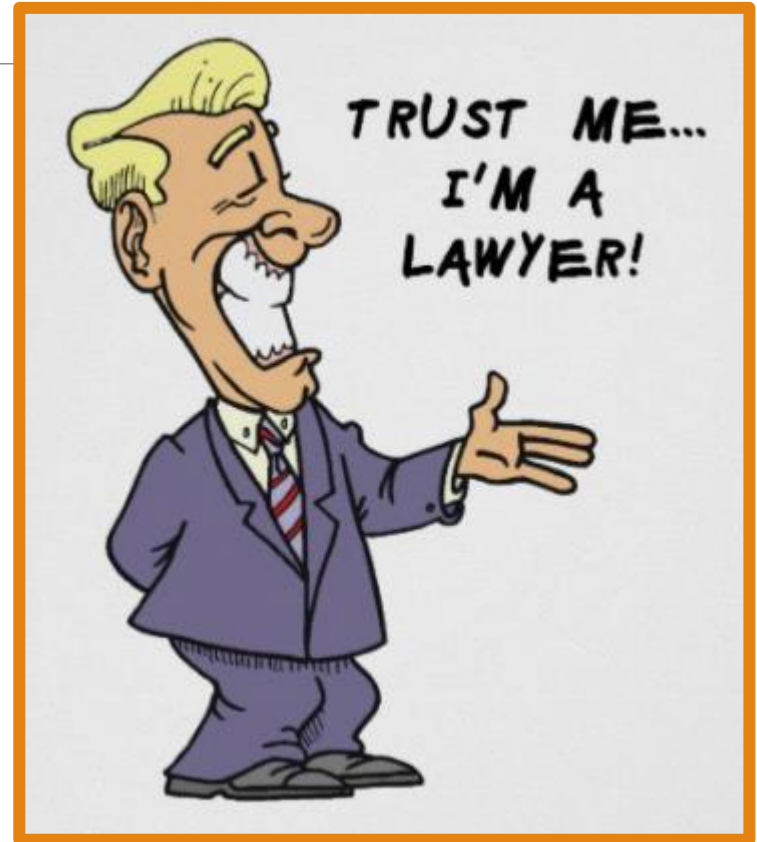
\*\*\*Remember the first impressions slide from opening?



# The Art of Persuasion

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- We are persuaded by things and people that we trust. Therefore, in order to persuade, we must be trustworthy
- Think about people you consider to be trustworthy.
  - What characteristics do they exhibit?





# The Art of Persuasion

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When it comes to persuasiveness,  
prosecutors have a distinct advantage:

**TRUTH!**



# Be Virtuous

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- Humility: take the case seriously, but not yourself
- Admit error immediately to set an example
- Do not fear trying a difficult case against a guilty defendant because you are afraid to lose.

## **Note to self:**

Don't seek to be relevant,  
or liked, seek to be undeniable.  
Seek to be compassionate.  
Seek integrity.  
Seek humility. Seek Light.

**Your belief in your case will come through**

# Recipe for Closing

- ☐ Theme
- ☐ Theory of your case in narrative form
- ☐ Elements
  - ☐ Identify and eliminate uncontested
  - ☐ Describe contested
  - ☐ Instructions relevant to winning contested
- ☐ Portillo Instruction
  - ☐ Firmly Convinced
- ☐ List evidence that shows “Firmly Convinced” on disputed evidence
- ☐ Theme and call to Action



# Theme

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- What did the Defendant do that deserves punishment?
- What did the Defendant do that deserves punishment?
- What did the Defendant do that deserves punishment?
- What did the Defendant do that deserves punishment?
- These are the FIRST words out of your mouth
  - As the first words out of your mouth, they are the ones the jurors are most likely to remember.
  - Do not waste them on thank yous and apologies
- Should be substantially the same as opening, but may require refinements in order to take advantage of what came out in evidence

# Narrative

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This differs from the narrative in your opening in that you can now use actual testimony and evidence to ***enhance your story***.

**This narrative can and should be argument!**

Play to all of your jury's senses in order to paint a picture with your words:

- What your arresting officer saw
- What your victim experienced
- What your defendant plotted

# State of Texas vs. Amber Guyger

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## **Utilize direct quotes from trial**

(this is where FTR or a second chair come in extra handy)

*"I never want anybody to ever have to go through or even imagine what I had to go through that night. That is garbage. Most of what she said is garbage."*

# Narrative

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## DO NOT:

- Repeat what each witness told them at trial in the order they told it
  - ...” *and then you heard from*\_\_\_\_\_, *who told you*\_\_\_\_\_.”

***NO!!!***

- Describe what was done in order to bring the Defendant to justice

# Example

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# Elements – Eliminate Confusion

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In most cases, a number of elements are not in dispute

- For example, in a possession of methamphetamine trial often there's no dispute that the drugs were in fact meth, or that the defendant possessed them
- What about a 'not my pants' case? **The issue = knowledge**
- The focus is on whether the defendant KNEW the meth was in the pants he borrowed from his roommate to run to jack in the box to get a burger last minute at 3 am.

By eliminating the undisputed elements, you show the jurors where to focus



# How this looks in closing

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**The crime of possession of a dangerous drug requires proof of the following:**

1. The defendant ✓

2. Knowingly

3. Possessed ✓

4. Meth, a dangerous drug ✓

# Review Important Instructions

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- Which Instructions play an important role in the jury's evaluation of your case?
- Don't be afraid to make suggestions as to how they should proceed
- Jury instructions are written by lawyers, and therefore are full of confusion

- ☐ Self-Defense
- ☐ Presumptions of Intoxication
- ☐ Credibility of Witnesses
- ☐ Direct and Circumstantial Evidence

# “Not my Pants”

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## SHOW THEM THE INSTRUCTION:

*“Knowingly” means that a defendant acted with awareness of, or belief in, the existence of conduct or circumstances constituting an offense. It does not mean that a defendant must have known the conduct is forbidden by law.*

## THEN EXPLAIN WHY S/HE KNEW:

- Johnny said that Samantha was wearing the pants all day
- They fit her well and are her size
- Johnny saw Samantha remove and replace items in her front pocket twice that day
- When Officer Jones found the meth, Sarah said “damnit”

# Do this for each count

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- You don't have to spend a lot of time on undisputed elements
- The Jury gets it, defense didn't fight it, why are you going to give it air time?
- Do this for each count until you are only left with what your trial is really about
- Explain the disputed element(s) using your theory of the case
- Include important definitions
- Use hypotheticals if it's helpful (but don't go overboard)

# Do we have undisputed elements?

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# Portillo Instruction

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*Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.*

# Make a list. Check it Twice.

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- Once you have articulated how your theme applies to the disputed elements, pull together every fact that proves your side of the disputed element
  - *“Members of the Jury, there are 5 reasons why you should be firmly convinced that the Defendant’s BAC was .08 or above...”*
  - *“Members of the jury, there are 15 pieces of evidence that show why you should be firmly convinced the Defendant was in Actual Physical Control”*



# Lists are Helpful

## Why this works:

- People like lists
- Lists are organized and easy to follow
- Jurors will copy down lists
- Emphasizes the totality of the case against the Defendant

## To Do List

- ☐ 1.) Make a to do list
- ☐ 2.) Check off first item
- ☐ 3.) Realize you already did 2 things on the list
- ☐ 4.) Reward yourself with a nice, long nap

Now I've finally achieved something today!

# Close Strong

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- Theme and call to action
- Tell the jury exactly what you want them to do
- Prepare something ahead of time!

“Find the defendant guilty on all counts. The facts lead you to his guilt. The evidence proves it, and justice demands it”

# Some Tips

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- Don't be afraid to suggest an order of deliberations
  - Maybe there's a count that you believe the State has clearly overcome. Suggest they start there.
- Rhetorical questions can be extremely effective
- Be organized – do NOT ramble
  - Less can be more. You don't have to repeat yourself over and over again

# Some more DON'TS

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## Stating your opinion

- “I believe the evidence has clearly shown the Defendant to be a liar”

## Vouching

- “you must believe Officer Smith because he is a witness for the State, and we all know the prosecution are the good guys”

## Hyperbolic descriptions about Defendant or the case

- “just look at those eyes. They are the eyes of a killer.”

## Personal attacks on Defense counsel

- “he lied to you throughout this trial”

## Comments on Defendant's right not to testify or invocation of his rights

- “if Defendant had nothing to hide, he would have just answered the officer's questions.”

# Example Closing

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# Rebuttal




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**D Close**

**Rebuttal Point**



potentially have  
hing prepared to  
ess in rebuttal if  
clear defense, but  
s my method in  
on to any canned  
buttal I have.

# Rebuttal Close

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- Theme
  - Re-direct them to your position
    - “this case isn’t about \_\_\_\_ and \_\_\_\_, its about (state your theme)
- State and own our burden
- Explain why Defendant’s “doubt” **isn’t reasonable**
  - Crush them by using every piece of evidence that contradicts their theory/arguments and show why it is unreasonable to believe the Defense
  - Refer jurors back to instructions
- **Theme and call to action!**

# Rebuttal Close

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- Come back to your theme.
  - *“This isn’t a case about [defense nonsense], it’s a case about.....”*
- Do NOT chase after Defendant’s arguments as if you are on a Snipe hunt!





# Rebuttal Close

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- The evidence for your case is strong and subject to only one reasonable interpretation
- You must demonstrate that whatever “doubts” defense has raised are **not reasonable**
- Usually, defense has attempted to distract the jurors on a collateral matter

# Rebuttal Close

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- Group proposed defenses based on your organization, not theirs
- Restate Defendant's position fairly
- Mass all of the facts you have to show that Defendant's position isn't reasonable

Example: "Defendant wants you to believe his BAC is inaccurate because of possible errors with the intoxilyzer"

*"However, here is all the evidence you have before you that shows it was working properly on the night of his test"*

- Make a list

# Go Back to the Instructions

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## Standard Criminal 1: Duty of Jury

“Determine the facts only from the evidence produced in court. When I say "evidence", I mean the testimony of witnesses and the exhibits introduced in court. You should not guess about any fact.”

**“Furthermore, Defendant’s argument is based purely on guesswork, which is exactly what you have been instructed NOT to do!**

# Rebuttal Close

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- **Dealing with Defenses:**
  - **DEFENSE: Poor Investigation**
    - **RESPONSE:** Show the jury all the evidence they have as a result of the investigation
  - **DEFENSE: Lack of Scientific Evidence**
    - **RESPONSE:** Defendant planned it this way
  - **DEFENSE: Witness Credibility**
    - **RESPONSE:** Defendant chose victim he thought wouldn't be believed
  - **DEFENSE: Conspiracy**
    - **RESPONSE:** If this was a conspiracy, it was a pretty terrible one
- **Remind them of Voir Dire / Oath**

# Example

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The Defendant is the reason we don't have direct evidence:

- Mask, Bandana, gloves ==> No DNA or Prints
- Cover of darkness
- Victim on the ground immediately and facing the wall
- Little to no talking between the masked men
- Removed license plate
- Very dark tinted windows
- Fled at over 100 MPH away from police
- Bailed from car before Deputy Schiess could see
- Fled on foot into the dark field

*“Every single one of these steps was taken to make sure that no direct evidence was left, that no person could stand before him and point and say “this is the guy.” Every single action was designed specifically for this day. And now he wants to stand before you and claim there’s not enough evidence to convict him!”*

# Any Questions?

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☐ Comments?

☐ Concerns?

☐ Thoughts?

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